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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BRIAN A. WESTON,
GLENN JACOBY, and
SIMON GERALD BRITON

Appeal 2007-3389
Application 09/476,935
Technology Center 3600

Decided:[1] May 30, 2008

Before HUBERT C. LORIN, ANTON W. FETTING, and
MICHAEL W. O'NEILL, *Administrative Patent Judges*.

LORIN, *Administrative Patent Judge*.

DECISION ON APPEAL

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[1] An oral hearing was conducted on May 13, 2008.

STATEMENT OF THE CASE

Brian A. Weston, et al. (Appellants) seek our review under 35 U.S.C. § 134 of the final rejection of claims 1, 7, 9-11, 19, 21, 24-26. Claims 2-6, 8, 12-18, 20, 22, 23, and 27-31 were cancelled. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

SUMMARY OF DECISION

We AFFIRM. [2]

THE INVENTION

The invention "relates to currency exchange trading systems, and, more particularly, to a system and method for efficiently conducting forward exchange and currency forwards between interconnected currency trading systems." Specification 1:11-13.

Claims 1 and 11, reproduced below, are illustrative of the subject matter on appeal.

> 1. A system for conducting electronic trading of foreign exchange forwards, the system comprising:
>
> a central server for tracking currency trades;
>
> a plurality of trading workstations; and
>
> at least one remote server interfacing the trading workstations to the central server, wherein the at least one remote server mediates currency trades between traders using the workstations by consulting trading configurations associated with each trader, wherein at least one of the trading configurations includes at least one temporary restriction settable by a first trader with respect to at least one trader

[2] Our decision will make reference to Appellants' Appeal Brief ("App. Br.," filed Apr. 17, 2006), the Examiner's Answer ("Answer," mailed Jun. 23, 2006), and Reply Brief ("Reply Br.," filed Aug. 23, 2006).

and when set automatically expiring at or after a predetermined time or time period.

11. A method for conducting electronic trading of foreign exchange forwards, the method comprising:

receiving currency trades for foreign exchange forwards from traders using a plurality of trading workstations;

receiving trading configurations from traders using respective trading work stations including receiving from a first trader at least one temporary restriction settable by the first trader with respect to at least one trader and when set automatically expiring at or after a predetermined time or time period;

tracking the currency trades in a central server; and

mediating currency trades between traders using at least one remote server, including:

interfacing the workstations to the central server;

consulting trading configurations associated with each trader; and

controlling the distribution of trading information between traders based on the trading configurations, including temporarily blocking and restricting from the view of the first trader any trading information from each trader with respect to which a temporary restriction has been received from the first trader while the temporary restriction is in effect.

THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

Potter	US 5,787,402	Jul. 28, 1998
Silverman	US 5,924,083	Jul. 13, 1999
Erickson	US 6,014,644	Jan. 11, 2000

Cooke, Stephanie, "Will brokers go broke?", Euromoney, n325, pp. 90-93, May, 1996. [Cooke]

The following rejections are before us for review:

1. Claims 1, 7, 11, 21, 24, and 26 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Potter and Silverman.
2. Claim 25 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Potter, Silverman, and Erickson.
3. Claims 9, 10, and 19 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Potter, Silverman, and Cooke.

ISSUES

The issues before us are whether the Appellants have shown that the Examiner erred in rejecting claims 1, 7, 11, 21, 24, and 26 as unpatentable over Potter and Silverman; claim 25 as unpatentable over Potter, Silverman, and Erickson; and, claims 9, 10, and 19 as unpatentable over Potter, Silverman, and Cooke. Specifically, the issue is whether Silverman would suggest to one of ordinary skill in the art a system for conducting electronic trading of foreign exchange forwards comprising "at least one of the trading configurations includes at least one *temporary* restriction *settable by a first trader* with respect to at least one trader and when set *automatically expiring* at or after a predetermined time or time period" (claim 1).

FINDINGS OF FACT

We find that the following enumerated findings of fact (FF) are supported by at least a preponderance of the evidence. *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Office).

Claim construction

1. Claim 1 is drawn to a system for conducting electronic trading of foreign exchange forwards comprising a central server for tracking currency trades; a plurality of trading workstations; and at least one remote server interfacing the trading workstations to the central server that mediates currency trades between traders using the workstations by consulting trading configurations associated with each trader, wherein at least one of the *trading configurations* includes at least one *temporary restriction* settable by a first trader with respect to at least one trader and when set *automatically expiring* at or after a predetermined time or time period.

2. The Specification does not provide a specific definition for *trading configurations* but rather uses the phrase to denote the setting of criteria for filtering traders with whom a first trader is willing to trade with.

> The disclosed system includes features such as filtering of entities by specified criteria such as bad credit, bad geography, etc. using the pre-set trading configurations associated with each trader, so that such filtered entities are not even displayed to a trader; request for quote functions, in which up to eight people can be selected and stored in a database who a trader is willing to trade with; and a penalty box for not trading or displaying trades of an annoying trader.

Specification 3:1-6.

3. The claimed *trading configurations* encompasses including a restriction from a broad range of different types of trading restrictions. See the Specification 3:16-21.

4. The claimed phrases *temporary restriction*, referring to a trading restriction included in the trading configuration, and *automatically expiring*, referring to the temporary restriction's expiration once it is set, are not defined in the Specification in a manner inconsistent with their ordinary and customary meanings. The Specification uses the terms in the context of a designing a "penalty box" to hold a trader that a first trader is not willing to trade with.

> Such customizable filtering may be used to effectively place an annoying or risky trader into a "penalty box", and so to allow a user to avoid trading or displaying trades of the penalized trader. In a preferred embodiment, the customizable filtering may be set to expire at the end of a predetermined time, such as five minutes or for the rest of the business day, and so the penalty box feature may be automatic but temporary to prevent such penalized traders from engaging in forthcoming foreign currency exchanges within the allotted penalty time period.

Specification 20:18-23.

5. The ordinary and customary meaning of "temporary" is "lasting … for a time only; not permanent." (*See Webster's New World Dictionary* 1377 (3rd Ed. 1988.)(Entry for "temporary.")

6. The ordinary and customary meaning of "automatically" is "moving, operating, etc. by itself; regulating itself." (*See Webster's New World Dictionary* 93 (3rd Ed. 1988.)(Entry 3 a) for "automatic.")

The scope and content of the prior art

7. Potter discloses a system for electronic trading of foreign exchange forwards (col. 9, l. 23) comprising a central server for tracking currency trades (Fig. 2, element 100), a plurality of workstations (Fig. 1, element 10) interfacing with the central server via a remote server that "verifies client credit and allows or denies trades from going forward based on specific user credit limits" (col. 5, ll. 39-41). See also Fig. 2, element 124.

8. Silverman discloses an electronic trading system whereby a trading entity may select a credit filtering option for a credit-filtered view of the market to "enable[ ] trading entities to determine what trades are available to them in the market at any given time based upon credit they have extended to others and/or credit others have extended to them." Col. 6, ll. 20-24. The Silverman system accomplishes this by maintaining credit information from each trading entity. Col. 4, ll. 57-67. The credit information "is always current." Col. 5, l. 34. The credit information may include credit limits that a trading entity is willing to extend to another credit entity. Col. 5, ll. 13-17. "Trading entities may modify these credit limits at any time before or during trading activities." Col. 5, ll. 17-18.

9. Erickson relates to a procurement system supporting information exchange between suppliers and buyers through coordination of communication and tracking responses.

10. Cooke relates to voice brokers.

Any differences between the claimed subject matter and the prior art

11. The claimed invention differs from that of the prior art in expressly requiring a trading restriction to be temporary and, once set, to expire automatically.

The level of skill in the art

12. Neither the Examiner nor the Appellants have addressed the level of ordinary skill in the pertinent art of electronic currency trading. We will therefore consider the cited prior art as representative of the level of ordinary skill in the art. *See Okajima v. Bourdeau,* 261 F.3d 1350, 1355 (Fed. Cir. 2001) ("[T]he absence of specific findings on the level of skill in the art does not give rise to reversible error 'where the prior art itself reflects an appropriate level and a need for testimony is not shown'")(quoting *Litton Indus. Prods., Inc. v. Solid State Sys. Corp.*, 755 F.2d 158, 163 (Fed. Cir. 1985).

Secondary considerations

13. There is no evidence on record of secondary considerations of non-obviousness for our consideration.

PRINCIPLES OF LAW

"Section 103 forbids issuance of a patent when 'the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said

subject matter pertains.'" *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1734 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, and (3) the level of skill in the art. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). *See also KSR*, 127 S.Ct. at 1734 ("While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls.") The Court in *Graham* further noted that evidence of secondary considerations "might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented." 383 U.S. at 17-18.

ANALYSIS

Rejection of claims 1, 7, 11, 21, 24, and 26 under 35 U.S.C. § 103(a) as being unpatentable over Potter and Silverman.

The Appeal Brief focuses on claim 1 (App. Br. 8-11). Although claims 7, 11, 21, 24, and 26 are placed in separate sub-headings in the brief (App. Br. 11-12), the Appellants' position with respect to the rejection relies solely on arguments made with respect to the rejection of claim 1. Accordingly, we will group these claims together and select claim 1 (see *supra*) as the representative claim for the group of claims rejected under 35 U.S.C. § 103(a) as being unpatentable over Potter and Silverman. Thus, claims 7, 11, 21, 24, and 26 stand or fall with claim 1.

The Examiner found that Potter disclosed all the limitations of the claimed system except "trading configurations from traders with respect to another trader and when set automatically expiring after a predetermined time period." Answer 4. For that, the Examiner relied upon Silverman. According to the Examiner:

> *Silverman* discloses receiving trading configurations from traders using respective work stations including receiving from a first trader at least one restriction settable by a first trader with respect to at least one trader (Col. 4, line 57 to Col. 5, line 37) and when set automatically expiring after a predetermined time period (a time period during which a trader has insufficient credit to deal with a first trader expiring when his/her credit increases to a sufficient amount to trade with a previously blocked trader, Col. 6, lines 11-26).

Answer 4. The Examiner determined that "[i]t would have been obvious to one of ordinary skill in the art at the time of the invention to modify *Potter* with the expiration of restriction when a trader regains sufficient credit to meet another's criteria disclosed by *Silverman* to maintain up-to-date, broadest market display." Answer 4.

We have carefully reviewed the record. We find the Examiner has properly characterized the scope and content of Potter and Silverman. See FF 7-8. We find the Examiner has articulated an apparent reason, with logical underpinning, for combining the disclosures of the Potter and Silverman in reaching the subject matter of claim 1. Accordingly, we find that the Examiner has established a prima facie case of obviousness.

The Appellants argue that Silverman does not disclose a temporary restriction that expires automatically. Specifically, the Appellants argue that Silverman discloses that a trading party may set a unilateral credit limit for

another trading partner. "A unilateral credit limit itself does not change until reset by the party itself. .. [O]nce set, a unilateral credit limit value does not expire and remains until changed by the trading party." App. Br. 9. "[U]nilateral credit limits set by the parties do not expire – they remain in effect until a party resets a unilateral credit limit." Reply Br. 2. Also, according to Appellants, in Silverman, "the credit limit values set by the trading entities do not automatically expire at a predetermined time period." App. Br. 10.

We are not persuaded by the Appellants' arguments as to error in the prima facie case. In essence, the Appellants are arguing that a trader's resetting of a credit limit for another trader cannot be temporary and automatic. The difficulty with this argument is that the terms "temporary" and "automatic," as used in claim 1, do not preclude a trader's resetting of an another trader's credit limit. The ordinary and customary meanings of these terms are "lasting … for a time only" and "moving, operating, etc. by itself," respectively. See FF 5 and 6. Once a trader resets a credit limit, the prior credit limit necessarily "last[ed] … for a time only," i.e., it was temporary. Furthermore, that prior credit limit operated by itself; that is, as soon as the credit limit was reset, the prior credit limit expired automatically. We note that the Appellants argue a distinction between Silverman's credit limit resetting and the claimed temporary and automatically expiration of a restriction in the context of a "penalty box." App. Br. 10. However, claim 1 is not limited so as to include a "penalty box." Accordingly, because the argument is not commensurate with what is claimed, the argument as it

relates to a "penalty box" is not persuasive as to error in the rejection. *In re Self*, 671 F.2d 1344, 1348 (CCPA 1982).

Rejection of claim 25 under 35 U.S.C. § 103(a) as being unpatentable over Potter, Silverman, and Erickson.

The Appellants rely on the arguments raised against the rejection of claim 1. App. Br. 11. Given that we find those arguments unpersuasive as to error in the rejection of claim 1, we reach the same conclusion with regard to the arguments as they apply to the rejection of this claim; that is, we find them unpersuasive as to error in the rejection.

Rejection of claims 9, 10, and 19 under 35 U.S.C. § 103(a) as being unpatentable over Potter, Silverman, and Cooke.

The Appellants rely on the arguments raised against the rejection of claim 1. App. Br. 12. Given that we find those arguments unpersuasive as to error in the rejection of claim 1, we reach the same conclusion with regard to the arguments as they apply to the rejection of these claims; that is, we find them unpersuasive as to error in the rejection.

CONCLUSIONS OF LAW

We conclude that the Appellants have failed to show that the Examiner erred in rejecting claims 1, 7, 11, 21, 24, and 26 as unpatentable over Potter and Silverman; claim 25 as unpatentable over Potter, Silverman, and Erickson; and, claims 9, 10, and 19 as unpatentable over Potter, Silverman, and Cooke.

DECISION

The decision of the Examiner to reject claims 1, 7, 9-11, 19, 21, 24-26 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2007).

AFFIRMED

vsh

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